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DEPARTMENT OF CORRECTIONS
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04333-0111

RANDALL A. LIBERTY
COMMISSIONER

TESTIMONY OF

**RANDALL A. LIBERTY COMMISSIONER
DEPARTMENT OF CORRECTIONS**

In Support of:

LD 2046, An Act to Continue Allowing the Department of Corrections to Accept Placement of Certain Defendants Found Incompetent to Stand Trial

Senator Beebe-Center, Representative Salisbury and distinguished members of the Joint Standing Committee on Criminal Justice and Public Safety, I am Randall Liberty, Commissioner of the Maine Department of Corrections (DOC) providing testimony in strong support of LD 2046, An Act to Continue Allowing the Department of Corrections to Accept Placement of Certain Defendants Found Incompetent to Stand Trial. As explained below, this is a department bill pursued in partnership with our colleagues at Department of Health and Human Services (DHHS), removing a sunset provision to a critical statutory authority allowing our departments to work together to provide care for a small subset of individuals. The Department thanks Representative Salisbury for sponsoring this bill on our behalf.

LD 2046 seeks to remove the sunset date of July 1, 2024, from the provision under 34-A MRSA §3069-C that authorizes the Commissioner of Corrections to accept placement of an adult defendant in a mental health unit of a correctional facility if the defendant has been found incompetent to stand trial, committed to the custody of the Commissioner of DHHS, and a court determines that the following criteria have been met:

- A. The defendant is at risk of causing serious harm by engaging in interpersonal violence that is not primarily driven by symptoms of major mental illness or other disability;
- B. There is not sufficient security at a state mental health institute to address the likelihood of serious harm; and
- C. There is no other less restrictive alternative to placement in a mental health unit of a correctional facility.

First established by Public Law 2021, c. 259, this provision was enacted by the 130th Legislature following the unanimous OTP-AM recommendation from the Joint Standing Committee on Criminal Justice and Public Safety. As explained in a recent report submitted to this committee and the Joint Standing Committee on Health and Human Services, jointly submitted by DOC and DHHS, once an individual has been found incompetent to stand trial and committed to the custody of DHHS, under 15 MRS §101-D(5), the Commissioner of DHHS is granted authority to determine placement "in an appropriate program for observation, care and treatment of people with mental illness or persons with intellectual disabilities or autism."

The provision preserved by this bill, 34 MRS §3069-C, adds one additional option for placement, in circumstances where the individual is at risk of causing serious harm by engaging in interpersonal violence - a mental health unit of a correctional facility. Placement in a mental health unit of a correctional facility is contingent upon a court finding that each of the applicable criteria under paragraphs A, B, and C have been met by clear and convincing evidence through a court proceeding that allows legal counsel representing the individual found incompetent to stand trial the full opportunity to participate and advocate for the best interests of their client.



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When transferred to DOC custody, individuals reside in the Intensive Mental Health Unit (IMHU) at the Maine State Prison, which is the only qualifying mental health unit of a correctional facility under this statute, and the only facility in Maine that is capable of safely housing the individuals to which this statute applies. The individual may not be transferred to any other unit of a correctional facility. After 90 days of placement in a mental health unit of a correctional facility, the defendant may petition the court for return to placement in a less restrictive setting on the grounds that the criteria for placement no longer exist.

The joint-report referenced above was submitted pursuant to Public Law 2021, c. 259, which also included the sunset date that this bill seeks to remove. The combination of the report and the sunset date were meant to provide this committee with an opportunity to review how the provision has been used since its enactment and evaluate whether it is necessary to maintain or amend the provision moving forward. This bill has been submitted as an emergency because the sunset date of July 1, 2024, is less than 90 days after statutory adjournment on April 17, 2023, and would not otherwise be able to take effect prior to the automatic repeal of 34-A MRSA §3069-C.

As highlighted in the data provided within the joint-report, this provision has been used sparingly, only four times since its enactment. Despite the small numbers of individuals placed in the IMHU, utilizing this option has resulted in significant enhancement of resource allocation for the State hospitals, increasing bed availability for other individuals needing treatment. DOC feels strongly that this provision has proven an essential tool for ensuring that the State can safely serve the needs of defendants found incompetent to stand trial in Maine, and respectfully asks for the committee's support in maintaining this critical provision.

This concludes my testimony.

I am happy to answer questions.

Randall A. Liberty
Commissioner
Maine Department of Corrections

§3069-C. Placement of defendants found incompetent to stand trial

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

(WHOLE SECTION TEXT EFFECTIVE UNTIL 7/01/24)

(WHOLE SECTION TEXT REPEALED 7/01/24)

1. Acceptance of placement. The commissioner may accept the placement of an adult defendant, referred to in this section as "the defendant," in a mental health unit of a correctional facility whom a court, after hearing, finds by clear and convincing evidence is incompetent to stand trial and whom the court commits to the custody of the Commissioner of Health and Human Services under Title 15, section 101-D, subsection 5 if, in addition to the findings required under Title 15, section 101-D, subsection 5, the court finds that:

A. The defendant is at risk of causing serious harm by engaging in interpersonal violence that is not primarily driven by symptoms of a major mental illness or other disability; [PL 2021, c. 259, §1 (NEW).]

B. There is not sufficient security at a state mental health institute to address the likelihood of serious harm; and [PL 2021, c. 259, §1 (NEW).]

C. There is no other less restrictive alternative to placement in a mental health unit of a correctional facility. [PL 2021, c. 259, §1 (NEW).]

[PL 2021, c. 259, §1 (NEW).]

2. Treatment; transfer. The department shall provide services and treatment consistent with the requirements of Title 15, section 101-D, subsection 5 to a defendant accepted for treatment in a mental health unit of a correctional facility under subsection 1. The department may not transfer to another unit of a correctional facility a defendant accepted for treatment in a mental health unit of a correctional facility under subsection 1.

[PL 2021, c. 259, §1 (NEW).]

3. Termination of placement. Termination of placement is governed by this subsection.

A. The commissioner may terminate the placement of a defendant accepted pursuant to this section if the commissioner determines that the likelihood of serious harm posed by the defendant has decreased or the security at a state mental health institute has increased or for any other reason. [PL 2021, c. 259, §1 (NEW).]

B. At any time after 90 days of placement in a mental health unit of a correctional facility, except not within 60 days of resolution of a prior petition under this paragraph, the defendant may petition the court for return to placement in a less restrictive setting on the grounds that the criteria for placement under subsection 1 no longer exist. If a petition is filed under this paragraph, the court shall hold a hearing and issue a decision maintaining or terminating the placement. [PL 2021, c. 259, §1 (NEW).]

[PL 2021, c. 259, §1 (NEW).]

4. Disclosure of information. With respect to a defendant who has previously been hospitalized under Title 34-B, chapter 3, subchapter 4, the commissioner may make it a prerequisite to accepting placement of the defendant under this section that necessary information be disclosed to the department pursuant to Title 34-B, section 1207, subsection 1, paragraph B.

[PL 2021, c. 259, §1 (NEW).]

5. Application of other laws. All other applicable provisions of law governing defendants found incompetent to stand trial apply to defendants accepted for placement under this section.

[PL 2021, c. 259, §1 (NEW).]

6. Sunset. This section is repealed on July 1, 2024.